

[Rondinelli v. Consolidated Edison Co. of New York, Inc.](#), 91-CAA-3 (Sec'y Apr. 10, 1992)

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DATE: April 10, 1992
CASE NO. 91-CAA-3

IN THE MATTER OF

DOMINICK RONDINELLI,

COMPLAINANT,

v.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

FINAL ORDER APPROVING SETTLEMENT

On March 23, 1992, the Administrative Law Judge (ALJ) issued, and transmitted to me for review, an Order Approving Settlement and Recommended Order of Dismissal with Prejudice in this case which arises under the Clean Air Act, as amended (CAA), 42 U.S.C. 7622 (1988).

The ALJ found the terms of the Settlement Agreement and General Release, executed by the parties on March 6, 1992, to be a fair, adequate and reasonable settlement of Complainant's allegations in this proceeding, and ordered that the agreement be approved. The ALJ also recommended that the Secretary enter a final order of dismissal with prejudice and without costs or attorneys' fees pursuant to Fed. R. Civ. P. 41 (a)(1)(ii), as proposed by the parties.

The CAA requires that I approve all settlement agreements. 42 U.S.C. 7622(b)(2)(A); *see Thompson v. United States Dept. of Labor*, 885 F.2d 551, 556 (9th Cir. 1989). After careful review, I first note that as the ALJ acknowledged, this settlement agreement purports to resolve a number of matters arising under other laws and agreements in

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addition to the CAA. For the reasons set forth in *Poulos*

v. Ambassador Fuel Oil Co., Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, slip op. at 2, I have limited my review of the agreement to determining whether its terms are a fair, adequate, and reasonable settlement of Complainant's allegations that Respondent violated the CAA.

The Ninth Paragraph, at page 17 of the agreement, is a confidentiality provision restricting the parties and their counsel from disclosing the terms of the agreement. Because the provision appears to broadly prohibit such disclosure under all circumstances, I interpret it as not restricting disclosure of the terms of the agreement where required by law. *Anderson v. Waste Management of New Mexico*, Case No. 88-TSC-2, Sec. Final Order Approving Settlement, Dec. 18, 1990, slip op. at 2.

Additionally, the agreement states that it "shall in all respects be interpreted, enforced and governed" under the laws of New York. Settlement Agreement and General Release at 19, Fourteenth Paragraph. I interpret this statement as not limiting the authority of the Secretary or the United States district court under the statute and the regulations. 42 U.S.C. 7622(d); see also 29 C.F.R. 24.8(a) (1991); *Phillips v. Citizens Assoc. for Sound Energy*, Case No. 91-ERA-25, Sec. Final Order of Dismissal, Nov. 4, 1991, slip op. at 2.

As limited and construed herein, I find the terms of the agreement to be fair, adequate, and reasonable, and, therefore, approve the Settlement Agreement and General Release. Accordingly, the complaint in this case is DISMISSED WITH PREJUDICE. See Settlement Agreement and General Release at 12, Fourth Paragraph.

SO ORDERED.

LYNN MARTIN
Secretary of Labor

Washington, D.C.